

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.194 OF 2006

Mahindra & Mahindra Ltd. .. Petitioners
V/s
Union of India & Anr. .. Respondents

Mr.R.A.Dada, Sr.Counsel with Mr.Vikram Nankani, Mr.Anil Wani, Mr.Mehul Shah and Mr.Amit Pradhan i/by ANS Law Associates for the Petitioners.

Mr.A.J.Rana, Sr.Counsel with Mr.P.S.Jetley for the Respondents.

**CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.**

DATE : 23.02.2006.

P.C.:

1. Heard the learned Counsel for the parties. By this petition, the Petitioner Company is challenging pre-deposit order passed by the CESTAT dated 30th November, 2005 whereby the Tribunal has directed the Petitioners to make deposit of 50% of the disputed duty amount by depositing Rs.54 crores in cash and by furnishing a bank guarantee for another Rs.54 crores within six weeks.

2. Mr.Dada, the learned Senior Counsel for the Petitioners has pointed out that though it was brought to the notice of the Tribunal that in an another Appeal filed by the Commissioner of Central Excise the issue regarding classification was involved and the Tribunal had decided the same on 19th July, 2005 in favour of the Petitioners herein. However, on the date when the impugned order was passed i.e.30th November, 2005 the

text of the said order dated 19th July, 2005 was not available so as to enable the CESTAT to consider the same, though it was brought to the notice of the CESTAT. The learned Senior Counsel Mr.Rana appearing on behalf of the Respondents does not dispute that the said text of the order dated 19th July, 2005 was not considered by the CESTAT while passing the order dated 30th November, 2005.

3. Under these facts and circumstances, only on this limited ground that the text of the order dated 19th July, 2005 was not considered by the CESTAT while passing the order dated 30th November, 2005, we quash and set aside the order dated 30th November, 2005. The application for waiver of deposit is remanded back for fresh hearing and the CESTAT is directed to dispose of the same on its own merits and in accordance with law. The contentions of both the parties are kept expressly open. Writ Petition stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)